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MONTANA
SUBDIVISION & PLATTING
ACT: AN 18-MONTH
PERSPECTIVE

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MONTANA SUBDIVISION AND PLATTING ACT:
AN EIGHTEEN MONTH PERSPECTIVE

THE LEGISLATION

The Montana Subdivision and Platting Act was enacted in 1973 by the 43rd Legislative Assembly in response to a growing public concern for the rapid and largely unregulated subdivision of Montana land for speculative, recreational and residential purposes. The Act has two primary objectives -- to avoid environmental, social and economic costs of haphazard land development by providing for effective public review and regulation of subdivisions, and to improve the accuracy of public land records.

The latter objective is addressed by the Act's requirement that all new divisions of land must be properly surveyed and that graphic records of these surveys be filed with the county clerk and recorder. The Act further requires that deeds and other instruments conveying interests in these parcels describe them by reference to the filed plat or certificate of survey. To assure statewide uniformity of land records, the Act charges the Planning Division of the Department of Intergovernmental Relations with promulgating standards for survey monumentation and for the form and content of records of survey.

The Act accomplished its first objective, public review and regulation of subdivisions, by requiring all cities and counties to adopt local subdivision regulations by July 1, 1974, and by providing that land within the state may not be subdivided and sold unless the plat of the proposed subdivision conforms to the regulations and has been

approved by the appropriate governing body. The regulations must conform to minimum requirements promulgated by the Planning Division of the Department of Intergovernmental Relations, and, in addition to establishing engineering, design, and procedural criteria for plat approval, the regulations must require the subdivider to submit an "environmental assessment" which describes the natural features of the land to be subdivided and the impact on community services. If any city or county fails to adopt local regulations by January 1, 1975, the Division must draft a set of regulations to be enforced by the local governing body as its own.

PLANNING DIVISION RESPONSIBILITIES

In addition to its rule making responsibilities under the Act, the Division is required to review all local regulations prior to their adoption for compliance with the state minimum requirements. It must also provide for an advisory review of proposed subdivision plats by those state and local agencies which have a substantial interest in subdivision activity. This review is intended to assist local governing bodies in their evaluation of proposed developments by providing technical expertise which would otherwise be unavailable to them.

The Division fulfilled its statutory obligations outlined above by adopting, on December 14, 1973, administrative rules establishing uniform survey standards and minimum requirements for local subdivision regulations. These rules, contained in the Montana Administrative Code, culminated nearly nine months of research, review and revision and evolved through a process designed to achieve the broadest public involvement. With the help of a task force of

representatives from six other state agencies the Division adopted minimum requirements for the environmental assessment as part of the rules. Rule revisions were adopted August 15, 1974 to reflect changes made in the law by the 1974 legislature and to facilitate enforcement of the Act.

REVIEW AND ASSISTANCE

An important part of the subdivision law requires a process of review by state agencies. Six state agencies -- the Bureau of Mines and Geology and the Departments of State Lands, Fish and Game, Highways, Natural Resources and Conservation, and Health and Environmental Sciences -- review subdivision plats and furnish comments to local planning boards. The Planning Division acts as a clearinghouse for this review by distributing copies of the plat and environmental assessment to the six agencies.

Staff members of the Planning Division also thoroughly review each plat and provide detailed comments and suggestions to the planning board. A permanent file is maintained on all proposed subdivisions submitted for state agency review with all the agency comments.

In addition to its statutory obligations, the Division has served a valuable function by providing technical assistance to local governing bodies and planning boards in preparing regulations. To offer local governments additional guidance State Model Subdivision Regulations were published. An informational handbook also was prepared which discusses the form, content and objectives of subdivision regulation and basic principles of subdivision design.

Staff members from the Helena office and the two Division field offices have concentrated their efforts the last two years on assisting cities and counties in drafting subdivision regulations and setting up procedures for enforcement. During the summers of 1973 and 1974 the Division sponsored a series of public meetings and workshops around Montana to explain the subdivision law and administrative rules and to assist local officials in understanding and meeting their responsibilities under the Act.

In implementing the Subdivision and Platting Act the Division has assumed a facilitative role, concentrating on assisting local government officials in understanding and complying with the law. The staff responds to any city or county requesting help, but priority assistance has been provided to those localities in Montana which are experiencing a high degree of subdivision activity.

Despite the efforts of the staff, some incorporated cities and towns and a few counties undoubtedly will not have adopted subdivision regulations complying with the law before January 1, 1975. Consequently, the role of the Division will broaden in December to include a regulatory function because the law mandates that before January 1, 1975, regulations be imposed on all cities and counties which have failed to adopt their own regulations. A summary of activities relating to the subdivision law is included on page 11.

RESPONSE OF CITIES AND COUNTIES

Montana cities and counties responded to their charge under the Subdivision and Platting Act well, especially when viewed in context

of some technical difficulties -- although the law as passed by the 1973 legislature required all local units of government to adopt regulations by July 1, 1974, the Act was substantially modified by 1974 amendments which did not become effective until July 1, 1974.

Thus it was impossible for local governments to adopt regulations until after July 1, 1974 when the amended law became effective. This understandably caused confusion. Many counties which had been making a sincere effort to prepare their regulations before the July 1 deadline found some of the basic ground rules changed. Amendments to the law also necessitated a revision of the Minimum Requirements for Local Subdivision Regulations, and the Division adopted the revised administrative rules setting out the new Minimum Requirements on August 15, 1974.

The interest in and attitude of local governments toward adopting regulations has generally been very good. Despite the changes in the law and the administrative rules, most governing officials and planning board members are conscientiously trying to develop their regulations.

COUNTY STATUS

As of mid-September, 25 counties (including nearly all of those counties experiencing substantial development pressures) had adopted subdivision regulations. Most of these were adopted before the 1974 amendments to the Act or the revised minimum rules took effect and will be revised to reflect the new requirements. Planning boards in these counties are currently working to bring their regulations into compliance with the law.

In 26 other counties which have not yet adopted regulations, efforts to comply with the law range from forming planning boards in order to draft regulations, to holding public hearings prior to adoption. In only five counties is there no known progress on preparing subdivision regulations. A list showing the progress of individual counties is included on page 12.

To date subdivision regulations for 15 of Montana's incorporated cities and towns have been submitted to the Division but other communities may have adopted subdivision regulations unknown to this agency. Frequently subdivision regulations are drafted cooperatively by the county and its incorporated cities. Regulations drafted by many county planning boards for county commissions will also be used by cities and towns within the county. It should also be noted that counties, rather than cities, experience greater pressures to regulate subdivision activity since most areas which are subject to being subdivided are outside of corporate boundaries.

ANALYSIS OF THE EFFECTIVENESS OF THE LAW

The effectiveness of the Montana Subdivision and Platting Act can be judged both in comparison with Chapter 6, Title 11, R.C.M. 1947 (the law it replaced) and with what people expect of the law. Since 1971, Chapter 6 had required all local units of government to adopt regulations and to review and approve subdivisions of land with parcels less than 10 acres in size.

Under Chapter 6 only a few counties and some of the larger cities had enacted regulations. But because the substance of the old law was

almost totally inadequate and there was no date for compliance specified nor was any state agency assigned the task of administration, there was no way to effectively bring about its implementation. As a result, very few divisions of land which should have been reviewed and approved as subdivisions actually were. Deeds were recorded for parcels less than 10 acres even where no plat had been filed.

Since the effective date of the Subdivision and Platting Act (July 1, 1973) 25 counties and at least 15 cities have adopted subdivision regulations under this law. Nearly all counties and most of the cities will have adopted their own regulations by January 1, 1975. Although enforcement of regulations is the key to making the subdivision law effective, each local government must take the first step of adopting regulations, and great progress has been made in this regard.

County clerk and recorders are very concerned about their responsibilities under the law and are going to great lengths to facilitate its enforcement. As the clerks and recorders come to better understand their roles, county property records are becoming more orderly and as a result county assessors and appraisers can carry out their functions more satisfactorily. Thus, the Subdivision and Platting Act is proving to be much more effective than the law it replaced in effecting public review and approval of plats and in maintaining good property records.

EXPECTATIONS AND RESULTS

In comparing what the new law is accomplishing with what was expected

of it, it must be pointed out that people with different interests and objectives are hoping that the law will accomplish different things. Those who hoped the law would stop or severely slow land development probably view the subdivision act as ineffective. Others have criticized the Act's failure to achieve wise land use by preventing the subdivision of environmentally unique or fragile areas or of productive agricultural land. Such criticism often stems from the misconception that subdivision regulations can accomplish those things expected of land use planning, when in fact, subdivision regulations are primarily a regulatory tool for assisting in the implementation of a land use plan.

Since the time of their inception, subdivision regulations (when applied without benefit of a land use plan) have been most effective in achieving improved internal functional and aesthetic design and least effective in regulating the location of a proposed subdivision. The location of subdivisions, on the other hand, is the proper subject of the comprehensive land use planning process by which physical and ecological limitations of the land are identified, social and economic needs of the people are recognized, and the appropriate general uses of different land areas are determined. While subdivision regulation is one important method of implementing a comprehensive plan, it is by no means a substitute for planning.

There are good indications that the new law is facilitating the implementation of local comprehensive plans and that detrimental development is being reduced by subjecting proposed subdivisions to thorough analysis and public review.

PROBLEMS OF THE ACT

Montana faces several problems in attempting to effectively administer control over land subdivision under the Act. The limitation of the Act's application to lots less than 20 acres in size prevents local officials from having any influence or control over land divisions of parcels 20 acres or greater. While most problems attendant to land divisions are more severe in small lot subdivisions, the larger lot developments can create undesirable impacts if completely uncontrolled.

One exemption under the law, if used unscrupulously, can be employed to avoid complying with the intent and purpose of the law. The "occasional sale", a provision allowing the sale of one parcel without review every 12 months, could become such a vehicle for evasion of the Act. However, the Division's administrative rules qualifying the use of this exemption should prevent its abuse while still retaining the legitimate relief it was intended to provide.

REVIEW RESULTS

The requirement that subdividers provide an environmental assessment for each proposed plat is an uncommon provision in state subdivision laws, but while some subdividers complain about the expense and time involved in preparation, the assessment has been quite useful to planning boards, governing bodies and reviewing agencies in evaluating what effects a subdivision will have and in achieving better subdivision design.

The state agency review process has begun to demonstrate its usefulness. Most of the six participating agencies have been conscientious

in reviewing and commenting on proposed plats. For many planning boards the agency comments have provided help and suggestions in a number of technical areas. Several planning staffs have used the state agency comments to support their requests for modifications of preliminary plats, and in nearly all cases local planning boards and staff are utilizing the help offered by the agency reviews.

Keeping in mind the rather brief "track record" available, the state's new subdivision law appears to provide the basis for effective subdivision regulation by Montana cities and counties. Since subdivision activity on a statewide basis is of critical concern to the entire state, state government has the responsibility to provide assistance to our cities and counties commensurate with those needs which are incurred in meeting a statewide concern.

In general, experience to date indicates that, should the future show less than optimum results from the subdivision law, the problems will have resulted from a scarcity of technical and professional assistance at the local level, rather than the failure of local officials to subscribe to the spirit of the law. It is also apparent that the new law must be coupled with the land use planning process in order to effectively address the location of new developments. Until that time it is most likely that prime agricultural lands, critical game habitat and sensitive environmental areas will continue to feel the pressure of subdivision activity.

SUMMARY OF ACTIVITIES RELATING TO SUBDIVISION LAW

July 1, 1973	Effective date of Montana Subdivision and Platting Act
September 1973	Division sponsored public meetings on the subdivision law and proposed administrative rules in Hamilton, Thompson Falls, Lewistown, Forsyth, White Sulphur Springs, Choteau, Columbus, Havre, Twin Bridges, and Glasgow.
November 25, 1973	Public hearing on proposed administrative rules
December 15, 1973	Adopted administrative rules
May 1974	Published Model Subdivision Regulations
July 1, 1974	Amendments to subdivision law (HB 1017) became effective
July 1974	Published informational handbook on subdivision and plat review.
July 8-19, 1974	Eight workshops held in Dillon, Livingston, Billings, Miles City, Glasgow, Havre, Polson, and Great Falls
August 15, 1974	Adopted revised administrative rules
September 1974	Published revised Model Subdivision Regulations

COUNTY	Planning Board Working On	Draft Prepared Public Hearing Held or Proposed	Adopted - Need Some Revision
Beaverhead			X
Big Horn			X
Blaine	X		
Broadwater			X
Carbon			X
Carter		X	
Cascade	X		
Choteau			X
Custer	X		
Daniels		X	
Dawson	X		
Deer Lodge			X
Fallon	X		
Fergus			X
Flathead			X
Gallatin	X		
Garfield	X		
Glacier			
Golden Valley	X		
Granite			X
Hill	X		
Jefferson			X
Judith Basin			X
Lake			X
Lewis and Clark		X	
Liberty	X		
Lincoln	X		
McCone	X		
Madison			X
Meagher			X
Mineral		X	
Missoula			X
Musselshell			X
Park			X
Petroleum			
Phillips	X		
Pondera	X		
Powder River	X		
Powell			X
Prairie			
Ravalli			X
Richland			X
Roosevelt	X		
Rosebud	X		
Sanders			
Sheridan	X		
Silver Bow	X		
Stillwater			X
Sweet Grass	X		
Teton			X
Toole			X
Treasure			
Valley	X		
Wheatland			X
Wibaux			X
Yellowstone	X		

